

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2723**

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**Introduced by Assembly Member Medina**

February 21, 2014

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An act to amend Sections 11340, 11342.535, 11342.610, 11346.3, and 11346.5 of the Government Code, relating to administrative procedure.

LEGISLATIVE COUNSEL’S DIGEST

AB 2723, as amended, Medina. Administrative procedure: small businesses.

The Administrative Procedure Act governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

Existing law requires the notice of proposed adoption, amendment, or repeal of a regulation to include, among other things, a description of all cost impacts, known to the agency at the time the notice of the proposed action is submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Existing law defines “cost impact” as the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

This bill would define “cost impact” to include those direct costs that a representative private person or sole proprietorship, small business,

and business necessarily incurs in reasonable compliance with the proposed action.

Existing law requires every state agency to prepare and submit to the Office of Administrative Law a final statement of reasons with the adopted regulation that includes, among other things, an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses, as defined. Under existing law, a small business does not include, among others, a landscape architect, an architect, or a building designer or an entity organized as a nonprofit.

This bill would delete a landscape architect, an architect, or a building designer from that list and would require that entity organized as a nonprofit to have more than 100 employees in order to not be considered a small business for purposes of the act.

Existing law requires all state agencies proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, to prepare an economic impact assessment that assesses whether and to what extent the proposal will affect, among other things, creation of new businesses or the elimination of existing businesses within the state. *Existing law requires each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, to prepare a standardized regulatory impact analysis in the manner prescribed by the Department of Finance. Existing law requires the standardized regulatory impact analysis to address, among other things, the creation of new businesses or the elimination of existing businesses within the state.*

This bill would require the assessment to assess whether and to what extent the proposal will affect, ~~among other things,~~ *and would require the analysis to address,* the creation of new businesses or the elimination of existing businesses within the state, including the impact on sole proprietorships and small businesses, as defined.

If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, existing law requires the state agency to include certain information in the notice of the proposed action, including, but not limited to, identification of the types of businesses that would be affected.

This bill would require that information to additionally include the size of businesses that would be affected.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11340 of the Government Code is  
2 amended to read:  
3 11340. The Legislature finds and declares as follows:  
4 (a) There has been an unprecedented growth in the number of  
5 administrative regulations in recent years.  
6 (b) The language of many regulations is frequently unclear and  
7 unnecessarily complex, even when the complicated and technical  
8 nature of the subject matter is taken into account. The language is  
9 often confusing to the persons who must comply with the  
10 regulations.  
11 (c) Substantial time and public funds have been spent in adopting  
12 regulations, the necessity for which has not been established.  
13 (d) The imposition of prescriptive standards upon private persons  
14 and entities through regulations where the establishment of  
15 performance standards could reasonably be expected to produce  
16 the same result has placed an unnecessary burden on California  
17 citizens and discouraged innovation, research, and development  
18 of improved means of achieving desirable social goals.  
19 (e) There exists no central office in state government with the  
20 power and duty to review regulations to ensure that they are written  
21 in a comprehensible manner, are authorized by statute, and are  
22 consistent with other law.  
23 (f) Correcting the problems that have been caused by the  
24 unprecedented growth of regulations in California requires the  
25 direct involvement of the Legislature as well as that of the  
26 executive branch of state government.  
27 (g) The complexity and lack of clarity in many regulations put  
28 small businesses, which do not have the resources to hire experts  
29 to assist them, at a distinct disadvantage. Given the importance of  
30 small businesses within the California economy, it is especially  
31 important that regulations that may have significant impacts on  
32 the private sectors be evaluated to determine the potential impact  
33 on these smaller size businesses.

1 SEC. 2. Section 11342.535 of the Government Code is amended  
2 to read:

3 11342.535. “Cost impact” means the amount of reasonable  
4 range of direct costs, or a description of the type and extent of  
5 direct costs, that a representative private person or sole  
6 proprietorship, small business, and business necessarily incurs in  
7 reasonable compliance with the proposed action.

8 SEC. 3. Section 11342.610 of the Government Code is amended  
9 to read:

10 11342.610. (a) “Small business” means a business activity in  
11 agriculture, general construction, special trade construction, retail  
12 trade, wholesale trade, services, transportation and warehousing,  
13 manufacturing, generation and transmission of electric power, or  
14 a health care facility, unless excluded in subdivision (b), that is  
15 both of the following:

16 (1) Independently owned and operated.

17 (2) Not dominant in its field of operation.

18 (b) “Small business” does not include the following professional  
19 and business activities:

20 (1) A financial institution including a bank, a trust, a savings  
21 and loan association, a thrift institution, a consumer finance  
22 company, a commercial finance company, an industrial finance  
23 company, a credit union, a mortgage and investment banker, a  
24 securities broker-dealer, or an investment adviser.

25 (2) An insurance company, either stock or mutual.

26 (3) A mineral, oil, or gas broker.

27 (4) A subdivider or developer.

28 (5) An entity organized as a nonprofit institution with more than  
29 100 employees.

30 (6) An entertainment activity or production, including a motion  
31 picture, a stage performance, a television or radio station, or a  
32 production company.

33 (7) A utility, a water company, or a power transmission company  
34 generating and transmitting more than 4.5 million kilowatt hours  
35 annually.

36 (8) A petroleum producer, a natural gas producer, a refiner, or  
37 a pipeline.

38 (9) A manufacturing enterprise exceeding 250 employees.

39 (10) A health care facility exceeding 150 beds or one million  
40 five hundred thousand dollars (\$1,500,000) in annual gross receipts.

1 (c) “Small business” does not include the following business  
2 activities:

3 (1) Agriculture, where the annual gross receipts exceed one  
4 million dollars (\$1,000,000).

5 (2) General construction, where the annual gross receipts exceed  
6 nine million five hundred thousand dollars (\$9,500,000).

7 (3) Special trade construction, where the annual gross receipts  
8 exceed five million dollars (\$5,000,000).

9 (4) Retail trade, where the annual gross receipts exceed two  
10 million dollars (\$2,000,000).

11 (5) Wholesale trade, where the annual gross receipts exceed  
12 nine million five hundred thousand dollars (\$9,500,000).

13 (6) Services, where the annual gross receipts exceed two million  
14 dollars (\$2,000,000).

15 (7) Transportation and warehousing, where the annual gross  
16 receipts exceed one million five hundred thousand dollars  
17 (\$1,500,000).

18 SEC. 4. Section 11346.3 of the Government Code is amended  
19 to read:

20 11346.3. (a) State agencies proposing to adopt, amend, or  
21 repeal any administrative regulation shall assess the potential for  
22 adverse economic impact on California business enterprises and  
23 individuals, avoiding the imposition of unnecessary or unreasonable  
24 regulations or reporting, recordkeeping, or compliance  
25 requirements. For purposes of this subdivision, assessing the  
26 potential for adverse economic impact shall require agencies, when  
27 proposing to adopt, amend, or repeal a regulation, to adhere to the  
28 following requirements, to the extent that these requirements do  
29 not conflict with other state or federal laws:

30 (1) The proposed adoption, amendment, or repeal of a regulation  
31 shall be based on adequate information concerning the need for,  
32 and consequences of, proposed governmental action.

33 (2) The state agency, prior to submitting a proposal to adopt,  
34 amend, or repeal a regulation to the office, shall consider the  
35 proposal’s impact on business, with consideration of industries  
36 affected including the ability of California businesses to compete  
37 with businesses in other states. For purposes of evaluating the  
38 impact on the ability of California businesses to compete with  
39 businesses in other states, an agency shall consider, but not be  
40 limited to, information supplied by interested parties.

(3) An economic assessment prepared pursuant to this subdivision for a proposed regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall be prepared in accordance with subdivision (b). An economic assessment prepared pursuant to this subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in accordance with subdivision (c), and shall be included in the initial statement of reasons as required by Section 11346.2.

(b) (1) All state agencies proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state, including the impact on sole proprietorships and small businesses, as defined in Section 11342.610.

(C) The expansion of businesses currently doing business within the state.

(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) (1) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, shall prepare a standardized regulatory impact analysis in the manner prescribed by the Department of Finance pursuant to Section 11346.36. The standardized regulatory impact analysis shall address all of the following:

(A) The creation or elimination of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state, *including the impact on sole proprietorships and small businesses, as defined in Section 11342.610.*

1 (C) The competitive advantages or disadvantages for businesses  
2 currently doing business within the state.

3 (D) The increase or decrease of investment in the state.

4 (E) The incentives for innovation in products, materials, or  
5 processes.

6 (F) The benefits of the regulations, including, but not limited  
7 to, benefits to the health, safety, and welfare of California residents,  
8 worker safety, and the state's environment and quality of life,  
9 among any other benefits identified by the agency.

10 (2) This subdivision shall not apply to the University of  
11 California, the Hastings College of the Law, or the Fair Political  
12 Practices Commission.

13 (3) Information required from state agencies for the purpose of  
14 completing the analysis may be derived from existing state, federal,  
15 or academic publications.

16 (d) Any administrative regulation adopted on or after January  
17 1, 1993, that requires a report shall not apply to businesses, unless  
18 the state agency adopting the regulation makes a finding that it is  
19 necessary for the health, safety, or welfare of the people of the  
20 state that the regulation apply to businesses.

21 (e) Analyses conducted pursuant to this section are intended to  
22 provide agencies and the public with tools to determine whether  
23 the regulatory proposal is an efficient and effective means of  
24 implementing the policy decisions enacted in statute or by other  
25 provisions of law in the least burdensome manner. Regulatory  
26 impact analyses shall inform the agencies and the public of the  
27 economic consequences of regulatory choices, not reassess  
28 statutory policy. The baseline for the regulatory analysis shall be  
29 the most cost-effective set of regulatory measures that are equally  
30 effective in achieving the purpose of the regulation in a manner  
31 that ensures full compliance with the authorizing statute or other  
32 law being implemented or made specific by the proposed  
33 regulation.

34 (f) Each state agency proposing to adopt, amend, or repeal a  
35 major regulation on or after November 1, 2013, and that has  
36 prepared a standardized regulatory impact analysis pursuant to  
37 subdivision (c), shall submit that analysis to the Department of  
38 Finance upon completion. The department shall comment, within  
39 30 days of receiving that analysis, on the extent to which the  
40 analysis adheres to the regulations adopted pursuant to Section

1 11346.36. Upon receiving the comments from the department, the  
2 agency may update its analysis to reflect any comments received  
3 from the department and shall summarize the comments and the  
4 response of the agency along with a statement of the results of the  
5 updated analysis for the statement required by paragraph (10) of  
6 subdivision (a) of Section 11346.5.

7 SEC. 5. Section 11346.5 of the Government Code is amended  
8 to read:

9 11346.5. (a) The notice of proposed adoption, amendment, or  
10 repeal of a regulation shall include the following:

11 (1) A statement of the time, place, and nature of proceedings  
12 for adoption, amendment, or repeal of the regulation.

13 (2) Reference to the authority under which the regulation is  
14 proposed and a reference to the particular code sections or other  
15 provisions of law that are being implemented, interpreted, or made  
16 specific.

17 (3) An informative digest drafted in plain English in a format  
18 similar to the Legislative Counsel's digest on legislative bills. The  
19 informative digest shall include the following:

20 (A) A concise and clear summary of existing laws and  
21 regulations, if any, related directly to the proposed action and of  
22 the effect of the proposed action.

23 (B) If the proposed action differs substantially from an existing  
24 comparable federal regulation or statute, a brief description of the  
25 significant differences and the full citation of the federal regulations  
26 or statutes.

27 (C) A policy statement overview explaining the broad objectives  
28 of the regulation and the specific benefits anticipated by the  
29 proposed adoption, amendment, or repeal of a regulation, including,  
30 to the extent applicable, nonmonetary benefits such as the  
31 protection of public health and safety, worker safety, or the  
32 environment, the prevention of discrimination, the promotion of  
33 fairness or social equity, and the increase in openness and  
34 transparency in business and government, among other things.

35 (D) An evaluation of whether the proposed regulation is  
36 inconsistent or incompatible with existing state regulations.

37 (4) Any other matters as are prescribed by statute applicable to  
38 the specific state agency or to any specific regulation or class of  
39 regulations.



1 (5) A determination as to whether the regulation imposes a  
2 mandate on local agencies or school districts and, if so, whether  
3 the mandate requires state reimbursement pursuant to Part 7  
4 (commencing with Section 17500) of Division 4.

5 (6) An estimate, prepared in accordance with instructions  
6 adopted by the Department of Finance, of the cost or savings to  
7 any state agency, the cost to any local agency or school district  
8 that is required to be reimbursed under Part 7 (commencing with  
9 Section 17500) of Division 4, other nondiscretionary cost or  
10 savings imposed on local agencies, and the cost or savings in  
11 federal funding to the state.

12 For purposes of this paragraph, “cost or savings” means  
13 additional costs or savings, both direct and indirect, that a public  
14 agency necessarily incurs in reasonable compliance with  
15 regulations.

16 (7) If a state agency, in proposing to adopt, amend, or repeal  
17 any administrative regulation, makes an initial determination that  
18 the action may have a significant, statewide adverse economic  
19 impact directly affecting business, including the ability of  
20 California businesses to compete with businesses in other states,  
21 it shall include the following information in the notice of proposed  
22 action:

23 (A) Identification of the types and size of businesses that would  
24 be affected.

25 (B) A description of the projected reporting, recordkeeping, and  
26 other compliance requirements that would result from the proposed  
27 action.

28 (C) The following statement: “The (name of agency) has made  
29 an initial determination that the (adoption/amendment/repeal) of  
30 this regulation may have a significant, statewide adverse economic  
31 impact directly affecting business, including the ability of  
32 California businesses to compete with businesses in other states.  
33 The (name of agency) (has/has not) considered proposed  
34 alternatives that would lessen any adverse economic impact on  
35 business and invites you to submit proposals. Submissions may  
36 include the following considerations:

37 (i) The establishment of differing compliance or reporting  
38 requirements or timetables that take into account the resources  
39 available to differing size of businesses.

1 (ii) Consolidation or simplification of compliance and reporting  
2 requirements for differing size of businesses.

3 (iii) The use of performance standards rather than prescriptive  
4 standards.

5 (iv) Exemption or partial exemption from the regulatory  
6 requirements for differing size of businesses.”

7 (8) If a state agency, in adopting, amending, or repealing any  
8 administrative regulation, makes an initial determination that the  
9 action will not have a significant, statewide adverse economic  
10 impact directly affecting business, including the ability of  
11 California businesses to compete with businesses in other states,  
12 it shall make a declaration to that effect in the notice of proposed  
13 action. In making this declaration, the agency shall provide in the  
14 record facts, evidence, documents, testimony, or other evidence  
15 upon which the agency relies to support its initial determination.

16 An agency’s initial determination and declaration that a proposed  
17 adoption, amendment, or repeal of a regulation may have or will  
18 not have a significant, adverse impact on businesses, including the  
19 ability of California businesses to compete with businesses in other  
20 states, shall not be grounds for the office to refuse to publish the  
21 notice of proposed action.

22 (9) A description of all cost impacts, known to the agency at  
23 the time the notice of proposed action is submitted to the office,  
24 that a representative private person or business would necessarily  
25 incur in reasonable compliance with the proposed action.

26 If no cost impacts are known to the agency, it shall state the  
27 following:

28 “The agency is not aware of any cost impacts that a  
29 representative private person or business would necessarily incur  
30 in reasonable compliance with the proposed action.”

31 (10) A statement of the results of the economic impact  
32 assessment required by subdivision (b) of Section 11346.3 or the  
33 standardized regulatory impact analysis if required by subdivision  
34 (c) of Section 11346.3, a summary of any comments submitted to  
35 the agency pursuant to subdivision (f) of Section 11346.3 and the  
36 agency’s response to those comments.

37 (11) The finding prescribed by subdivision (d) of Section  
38 11346.3, if required.

39 (12) (A) A statement that the action would have a significant  
40 effect on housing costs, if a state agency, in adopting, amending,

1 or repealing any administrative regulation, makes an initial  
2 determination that the action would have that effect.

3 (B) The agency officer designated in paragraph (14) shall make  
4 available to the public, upon request, the agency's evaluation, if  
5 any, of the effect of the proposed regulatory action on housing  
6 costs.

7 (C) The statement described in subparagraph (A) shall also  
8 include the estimated costs of compliance and potential benefits  
9 of a building standard, if any, that were included in the initial  
10 statement of reasons.

11 (D) For purposes of model codes adopted pursuant to Section  
12 18928 of the Health and Safety Code, the agency shall comply  
13 with the requirements of this paragraph only if an interested party  
14 has made a request to the agency to examine a specific section for  
15 purposes of estimating the costs of compliance and potential  
16 benefits for that section, as described in Section 11346.2.

17 (13) A statement that the adopting agency must determine that  
18 no reasonable alternative considered by the agency or that has  
19 otherwise been identified and brought to the attention of the agency  
20 would be more effective in carrying out the purpose for which the  
21 action is proposed, would be as effective and less burdensome to  
22 affected private persons than the proposed action, or would be  
23 more cost effective to affected private persons and equally effective  
24 in implementing the statutory policy or other provision of law. For  
25 a major regulation, as defined by Section 11342.548, proposed on  
26 or after November 1, 2013, the statement shall be based, in part,  
27 upon the standardized regulatory impact analysis of the proposed  
28 regulation, as required by Section 11346.3, as well as upon the  
29 benefits of the proposed regulation identified pursuant to  
30 subparagraph (C) of paragraph (3).

31 (14) The name and telephone number of the agency  
32 representative and designated backup contact person to whom  
33 inquiries concerning the proposed administrative action may be  
34 directed.

35 (15) The date by which comments submitted in writing must  
36 be received to present statements, arguments, or contentions in  
37 writing relating to the proposed action in order for them to be  
38 considered by the state agency before it adopts, amends, or repeals  
39 a regulation.

1 (16) Reference to the fact that the agency proposing the action  
2 has prepared a statement of the reasons for the proposed action,  
3 has available all the information upon which its proposal is based,  
4 and has available the express terms of the proposed action, pursuant  
5 to subdivision (b).

6 (17) A statement that if a public hearing is not scheduled, any  
7 interested person or his or her duly authorized representative may  
8 request, no later than 15 days prior to the close of the written  
9 comment period, a public hearing pursuant to Section 11346.8.

10 (18) A statement indicating that the full text of a regulation  
11 changed pursuant to Section 11346.8 will be available for at least  
12 15 days prior to the date on which the agency adopts, amends, or  
13 repeals the resulting regulation.

14 (19) A statement explaining how to obtain a copy of the final  
15 statement of reasons once it has been prepared pursuant to  
16 subdivision (a) of Section 11346.9.

17 (20) If the agency maintains an Internet Web site or other similar  
18 forum for the electronic publication or distribution of written  
19 material, a statement explaining how materials published or  
20 distributed through that forum can be accessed.

21 (21) If the proposed regulation is subject to Section 11346.6, a  
22 statement that the agency shall provide, upon request, a description  
23 of the proposed changes included in the proposed action, in the  
24 manner provided by Section 11346.6, to accommodate a person  
25 with a visual or other disability for which effective communication  
26 is required under state or federal law and that providing the  
27 description of proposed changes may require extending the period  
28 of public comment for the proposed action.

29 (b) The agency representative designated in paragraph (14) of  
30 subdivision (a) shall make available to the public upon request the  
31 express terms of the proposed action. The representative shall also  
32 make available to the public upon request the location of public  
33 records, including reports, documentation, and other materials,  
34 related to the proposed action. If the representative receives an  
35 inquiry regarding the proposed action that the representative cannot  
36 answer, the representative shall refer the inquiry to another person  
37 in the agency for a prompt response.

38 (c) This section shall not be construed in any manner that results  
39 in the invalidation of a regulation because of the alleged inadequacy  
40 of the notice content or the summary or cost estimates, or the

- 1 alleged inadequacy or inaccuracy of the housing cost estimates, if
- 2 there has been substantial compliance with those requirements.

O